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REMARKS

Status of the claims. Claims 1-12 are in the application.

5 Claims 1-9, 11 and 12 were rejected. Original claims 1-8, 11 and 12 are presented again. Claim 9, was previously amended.. Claim 10 is objected to only as depending from a rejected claim, and would be allowable if rewritten independently.

Section 103 rejection of claims 1 over Margulies et al.

10 4,294,361 in view of Price 5,339,960.

Reconsideration of this new theory of rejection by Examiner, based upon a notional combination of references different from the previous action, is requested for the very good reasons we here give.

15 There is no doubt that Margulies '361 discloses a container for storing and dispensing consumer products that includes a tray 10 having a generally planar top surface and one or more discrete cavities. A cover film 14 is to be secured to the generally planar top surface of the tray to seal the cavities.

20 The cover film is provided with pre-formed tear lines. In the case of the first embodiment of Figures 1 to 3, the pre-formed tear lines 20 and 26 extend around three sides of each of the second cavities 18 but not around the discrete cavities 12 for containing the tablets or capsules. When one of the second

25 cavities 18 of Margulies is manually inverted by a user, the cover film 14 is ruptured along the tear lines 20 and 26 to form a lug portion 22 that can be grasped and then used to remove the part of the cover film that overlies the associated cavity.

30 The other dashed lines 30 shown in Figure 1 of Margulies are not pre-formed tear lines but instead represent perforations that extend through both the tray 10 and the cover film 14 and allow

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the strip to be divided into individual units. In the case of the second embodiment of Figures 4 to 6 of Margulies, the pre-formed tear lines 36 and 38 are shaped to form a more distinctive lug portion 40 when the second cavity 18' is
5 inverted. Only one unit is shown in Figure 4 but the Margulies description makes it clear that several units can be joined together in the same way as in the first embodiment to form a strip. If a unit of Margulies is formed singly or has been separated along perforations, then grasping the lug portion 40
10 would enable the whole of the cover film 14' to the left of the pre-formed tear lines 36 and 38 to be removed as one piece.

It will be clear from the above analysis that the cover film of Margulies '361 does not have pre-formed tear lines that define a tear-off portion corresponding to the periphery of the
15 or each cavity (i.e. the cavity for receiving the tablets or capsules rather than the purely functional second cavities 18 that are only used to raise the associated lug portions 40 when manually inverted). To the extent that the cover film 14 of Margulies '361 includes lug portions then these are absolutely
20 not secured to the tray 10. Figure 1 so demonstrates by the lack of dotted shading in the region surrounding the row of second cavities 18.

We wish to emphasize to Examiner that the main technical difference between the container of claim 1 and that disclosed
25 in Margulies '361 is the presence of upwardly extending projections at the time when the cover film is secured to the generally planar top surface of the tray. Claim 1 of the present application is very certainly specific on this point. The upwardly extending projections must be positioned to be
30 located beneath the or each lug portion in use to *bend* that lug

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portion upwardly out of the plane of the remainder of the cover film when the cover film is secured to the generally top surface of the tray. Put another way, the upwardly extending projections

must fulfill a specific function at a specific time. In sharp

5 comparison, in Margulies '361 the second cavities 18 are located in their non-inverted position (i.e., the position shown in

Figure 2) until such time as a user wishes to dispense the content of one of the discrete cavities 12. This means that the

tray 10 of Margulies '361 does not include upwardly extending

10 projections that bend the lug portions out of the plane of the remainder of the cover film at the particular time when the

cover film is secured to the generally planar top surface of the tray 10. The second cavities 18 may be manually inverted by a

user to bend a selected one of the lug portions out of the plane

15 of the remainder of the cover film, but this happens on a lug-by-lug basis after the cover film 14 has been applied.

It is respectfully stated that Examiner has not acknowledged this technical difference and only states in paragraph 2 of the Office action that "Tray 10 has an upwardly

20 extending protrusion 18 to bend the lug 22 upwardly out of the plane of the cover film 14 [see Figure 3]."

Will Examiner acknowledge this technical difference between claim 1 and the Margulies reference? If Examiner prefers, this can be discussed by telephone interview, and if Examiner thinks

25 that might be useful, will Examiner please so indicate or initiate such a telephone discussion?

Consider now Price '960, which the Examiner has stated "discloses pre-formed tear-lines 18 corresponding to the periphery of cavities 12 for controlling tearing of the cover."

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The conclusion stated by Examiner is that "It would have been obvious to one of ordinary skill in the art in the time the invention was made to provide the tear lines 26 of Margulies in a shape corresponding to the periphery of the cavities as taught
5 by Price, in order to control the tearing of the cover film."

It helps to summarize the features of the package disclosed in Price '960. The package is basically formed in two parts. There is a rather conventional blister pack 37 shown in Figure 6 where a sheet of transparent vinyl is processed to form a layer
10 with blisters 59. The tablets or capsules are sealed in the blisters 59 by a rupturable barrier 19 that includes a foil layer 60 and a paper layer 62. A cover made of paperboard is then firmly secured to the rupturable barrier 19 using a heat bonding adhesive. The paperboard cover has a folded
15 construction with two separate layers. To dispense a tablet or capsule from one of the blisters 59 a user of the Price construction must first bend a tab 15 adjacent an edge of the cover to tear along lines 16. The user then grasps the tab 15 and uses it to peel back an access panel 17 that is bonded to
20 the tab along pre-formed score lines 18. Once the access panel 17 has been "peeled back to the first access position" (it is important to note that the access panel is not completely removed but seems to remain attached to the rest of the top layer as shown in Figures 2 and 5 of the Price reference), the
25 tablet or capsule can be pushed through the rupturable barrier 19 and past a bendable breakaway panel 21 that is located between the access panel 17 and the blister pack 37.

Examiner is asked to reconsider the notional combination of the references. The paperboard cover of Price is so complicated
30 and so different from the flexible cover film used in Margulies

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'361 that one simply cannot imagine how the person ordinarily skilled in the art could even start to try to combine the documents together in a meaningful way. For example, why would the such a person presumed to be a reader of Price '960 look
5 only at the superficial arrangement of the score lines 18, 49 and 50 and yet completely ignore the fact that a separate paperboard cover adhered to the rupturable barrier of a conventional blister pack is technically incompatible with the dispensing container of Margulies '361? Even if both references
10 show attempt to solve the same technical problem (how to provide a package or container that is child-proof but which can be easily opened by an adult) the two solutions are contradictory. There is nothing in Price '960 to teach or suggest that there are technical advantages to having score lines that extend
15 around the periphery of the discrete cavities. There is no motivation to do so. Examiner ought to note that the access panels 17 of Price '960 are located alongside the edge of the pack and the score lines 18 only extend around three sides of the blisters 59. The fourth side is the free edge of the
20 paperboard. The breakaway panel 21 has a similar construction with score lines 49 and 50 extending around three sides of the blisters 59. This feature is essential to Price because the breakaway panels 21 are not supposed to be removed but are designed to bend at 53 to allow the contents of the blisters to
25 be pushed through the rupturable barrier 19.

Only with the benefit of improper hindsight, based on considering applicant's construction, would the skilled reader of Price '960 look to modify the tear lines 20 and 26 of Margulies '361 to conform more closely to the arrangement of the
30 score lines 18 around the access panels 17 or the score lines 49 and 50 around the breakaway panels 21. Even then, such a

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modification would not arrive at the present invention for the reasons given above.

None of the cited references teaches or suggests the use of upwardly extending projections to raise lug portions of a cover film when that cover film is adhered to the surface of a tray. The chief focus of the present invention is a multi-dosage dispensing container where each cavity is filled with mixed medication by a pharmacist. The dispensing container is therefore intended to be used by patients with illnesses that require mixed medication at certain periods during the day. In many cases the dispensing container and will be used in care homes and on hospital wards under the supervision of trained professionals. Although tamper-evident features are therefore useful, there is no requirement for the dispensing container to be child-proof. The fact that the lug portions are bent upwardly out of the plane of the remainder of the cover film when the film is stuck down means that they are more easily grasped by the user preparatory to removing the associated tear-off portion. This is surely contrary to the teaching of both Margulies '361 and Price '960 where the focus is on providing a dispensing container or pack that incorporates features to make it more difficult for children to gain access to the medication stored in the blisters and cavities. With this in mind, we must question why the skilled person would seek to modify the design of Margulies '361 or Price '960 in such a way as to make it easier for children to remove the tear-off portions. That would be illogical. It is essential that Examiner consider in Margulies column 1, lines 12 to 16 and column 3, lines 20 to 25 and then compare Price column 1, lines 6 to 10, column 2, lines 5 to 8 and column 5, lines 52 to 62. Such clear statements about the necessity for child-proof features in these references

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cannot just be ignored by the skilled person; and so also they must not be ignored by Examiner.

Applicant is constrained to say that it appears only by hindsight is Examiner motivated to find and combine the above references to attempt to arrive at the invention of claim 1. In *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 934, 15 USPQ2d 1321, 1323 (Fed. Cir. 1990), the Federal Circuit Court of Appeals ("FCCA" herein) stated the principle that it "is insufficient that prior art shows similar components, unless it also contains some teaching, suggestion, or incentive for arriving at the claimed structure." It is respectfully contended that Examiner's reconstruction does not warranted in view of the references. The FCCA more recently made it clear that the identification of references that appear to suggest a claimed limitation does not establish a *prima facie* case of obviousness, without a finding as to the *specific understanding or principle within the knowledge of the skilled artisan* that would have motivated one with *no knowledge of the intention* to make the claimed combination. In *re Kotzab*, 55 USPQ 1313, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). Thus, under *Kotzab* the burden is on the examiner to identify concrete evidence in the record to support his conclusion that it would have been obvious to modify the teachings of the cited references to achieve the claimed invention. The cases of *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) [combining the applied reference teachings based upon impermissible hindsight derived from appellants' own disclosure] and *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir., 1984) [not a valid reject to base on hindsight in view of applicant's claims rather than some

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teaching, suggestion or incentive derived from the prior art] are often viewed as key precedents in this regard.

Nothing about *In re Fout*, cited by Examiner, makes it any less true that disparate teachings of the prior art showing similar components are simply insufficient to support an obviousness rejection, unless the prior art references also contain the teaching, suggestion, or incentive for the skilled artisan to arrive at the claimed structure. Applicant has demonstrated otherwise.

It is submitted accordingly that claim 1 should be held allowable over Margulies et al. 4,294,361 in view of Price 5,339,960.

Section 103 rejections of claims 2-8, 11 and 12 over Margulies-Price further taken with Braverman 3,924,748.

Braverman '748 is relied upon for its disclosure of adhesive in the rejection of claims 2 and 4. That is, it has a two-part construction with a cover sheet 40 that is adhered to a liner sheet 44 by a peelable adhesive. Otherwise, Braverman seems hardly to be considered, in that it includes a tray which differs from that of the present application in that it includes a series of linear perforations 36 that enable the tray to be divided into a number of individual units, being thus intended to be used in a completely different way relative to both the present invention and the dispensing containers described in Margulies and Price. Circular portions or patches prevent the articles held in the discrete cavities from coming into contact with the peelable adhesive on the underside of the cover sheet. But Braverman fails otherwise teach the structure of claims 2 or 4, which define over Margulies-Price for the reasons set forth above regarding claim 1.

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Claims 2-8, 11 and 12, being all dependent ultimately from claim 1, for the reasons set forth above regarding claim 1.

Specifically regarding claim 5, Examiner has said that the patches 52 of Braverman, if hypothetically used in the supposed
5 Margulies-Price-Braverman combination "would have the claimed vapour barrier properties." But that would not be correct, as we cannot find such "vapour barrier properties" in Braverman. The patches 52 (described in column 4, lines 33-53) are just used "to remain affixed to the adhesive coating 50 on the
10 interior surface 48 of the cover sheet after the liner is removed therefrom so as to provide a non-adhesive area on the inner surface" Applicant contends that claim 5 provides for these reasons a further unsuggested container as according to claim 4, in turn dependent from claim 1. So, it should be
15 additionally patentable.

Claim 6 ought to be patentable for the reasons as claims 1, 4 and 5.

Regarding claims 7 and 8, it is believed that these are under any reasonable interpretation "product-by-process claims"
20 as Examiner contends. Instead, they describe the container attributes precisely as it exists in a point of time. This is a proper way to claim this container invention, for nothing in the Patent Laws of the United States precludes an applicant from reciting in a claim the conditions or attributes of the claimed
25 article as such conditions or attributes do in fact exist at a time when the article is being used. Such a rejection cannot be maintained and should be withdrawn. Moreover, these claims logically and properly relate back to claim 6, and further limit the claimed construction, so that they fully patentable in the
30 application.

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In rejecting claims 11 and 12, Examiner provides an "obvious design choice" rejection, but Examiner has failed regarding claim 11 to suggest why skilled artisan would select a certain material—in this instance, the specific cover material.

5 As the claim positively recites four specific groupings, which are significant in the combination claimed and do not constitute mere design choices but instead represent the materials recited by the inventor as making the claimed container effective for the purposes described in the specification. Regarding claim
10 12, a specific attribute is claimed, as is entitled to serious consideration in the recited combination, and is not a mere design choice but instead a requirement for the combination recited. It is entitled to consideration by Examiner.

Claim 10

15 Claim 10 was objected to only as depending from a rejected claim, and would be allowable if rewritten independently, but has not yet been rewritten as it is believed that claim 5, from which claim 10 is dependent, is properly patentable in the application, as it in turn relates back to patentable claim 1.

20 Action Requested

In view of the distinctions set forth in this response, reconsideration by Examiner is requested, together with withdrawal of the rejection of claim 1, and consequent allowance of claim 1 and all other dependent claims. In summary, with
25 the present amendments, claims 1-12 are respectfully submitted to be patentable in the application and should be held allowable without further amendment.

While the undersigned believes that the foregoing resolves all remaining issues, if Examiner believes there is any
30 remaining issue which could be readily resolved or other action could be taken to advance this application, such as Examiner's

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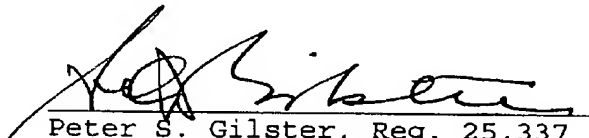
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amendment, it is requested that Examiner please telephone the undersigned. If necessary to effect a timely response, this paper should be considered as a petition for extension of time of length sufficient to be considered timely.

5 Any fees required, to the extent not covered by payment submitted herewith, are authorized to be charged to Deposit Account No. 07-1985.

Respectfully submitted,

10 Date: 12 April 2006


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20 Attachment(s): Transmittal with Certification of Fax Transmittal

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